

Notice of Allowability

Application No.

10/024,971

Examiner

Thuy N. Pardo

Applicant(s)

RUSSO ET AL.

Art Unit

2165

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to RCE and Amendment filed on 7/13/2006 and 5/01/2006.
2. ☒ The allowed claim(s) is/are 1, 3-6, 14, 16-19 and 27, now renumbered 1-11.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

THUY N. PARDO
PRIMARY EXAMINER

DETAILED ACTION

1. Applicant's RCE filed on July 13, 2006 and Amendment filed on May 01, 2006 in response to Examiner's Office Action have been reviewed. Claims 7, 14, 16 and 27 have been amended, and claims 2, 7-13, 15, 20-26, 28 and 29 have been canceled.

2. Applicant's arguments, see pages 8-12, filed on May 01, 2006, with respect to the rejections of amended claims 1, 3-6, 14, 16-19 and 27 under 35 U.S.C. 103(a) as being unpatentable over Otsuka et al. (Hereinafter "Otsuka") US Patent No. 6,697,823, in view of Whiting et al. (Hereinafter "Whiting") US Patent No. 5,778,395 have been fully considered and are persuasive.

Allowable Subject Matter

3. Claims 1, 3-6, 14, 16-19 and 27 are allowed over the prior art of record.

The following is a statement of reasons for the indication of allowable subject matter:

The prior art of record fails to teach or suggest individually or in combination performing a dialogue wherein the interface is created dynamically using data structures created by the execution of selected ones of a plurality of software functions calls, said function calls executing code associated with backup and/or restore operations and performing a backup or restore operation is carried out by the agent through communications with an application program interface wherein the functions calls are part of the application program interface as set forth in independent claims 1, 14 and 27.

Art Unit: 2165

Dependent claims 3-6 and 16-19 being further limiting to the independent claims 1 and 14 respectively are also allowed.

The closest prior art, Otsuka et al. US Patent No. 6,697,823 teaches a computer system having backup function with specified storage period of backup data. The closest prior art fails to anticipate or render Applicant's limitations above obvious.

4. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thuy N. Pardo whose telephone number is 571-272-4082. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Gaffin can be reached on 571-272-4146. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2165

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

September 19, 2006

A handwritten signature in black ink, consisting of a series of loops and a long, sweeping horizontal stroke at the bottom.

THUY N. PARDO
PRIMARY EXAMINER